



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

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TO: Members, Public Disclosure Commission

FROM: Vicki Rippie, Executive Director

DATE: April 18, 2006

SUBJECT: Rules Implementing ESSB 5034, Electioneering Communications – Public Hearing and Possible Permanent Adoption

Brief History

Legislature. In 2005, the Legislature passed PDC request bill ESSB 5034 and enacted a special reporting obligation for electioneering communications, advertising that satisfies four distinct and objective criteria:

1. distributed through television, radio, postal mailing, billboard, newspaper or periodical;
2. clearly identifies a candidate for state, local or judicial office;
3. appears within 60 days of an election in the candidate's jurisdiction; and
4. costs \$5,000 or more.

A communication or series of communications that do not have all of these characteristics do not qualify as electioneering communications.

The bill also reenacted the contribution limits that govern how much may be contributed to, and accepted by, candidates for state office, political party organizations and caucus political committees. As is clearly expressed in the Findings and Intent sections of the bill, the purpose of this action was to emphasize that while political parties may receive contributions exempt from limits, those funds (soft money) may only be used for the purposes identified in law.

Most sections of ESSB 5034 went into effect on January 1, 2006, and the rules proposed for adoption at the April meeting are designed to provide additional guidance on the meaning and requirements of the law.

Public Outreach. After sending notices to more than 130 stakeholders, PDC staff discussed ESSB 5034 and the rulemaking effort at meetings on December 14, 2005, and February 8, 2006. Written comments provided by stakeholders were forwarded to commissioners as part of their meeting materials. A total of twelve stakeholders actually attended at least one of the meetings.

Commission Activity. Commissioners had their first in-depth review of ESSB 5034 and some of the policy decisions necessary for its implementation at the October 27, 2005, monthly meeting. Altogether, draft language for 23 new and amended rules has been approved at Commission meetings on November 30, 2005, January 23, 2006, February 23, 2006, and March 9, 2006 (teleconference). These proposed rules were filed with the Code Reviser and the public hearing was set for April 27, 2006.

Proposed Rules

Because of the way PDC rules are organized, the 23 proposals are spread across four different chapters of Title 390 WAC: chapters 05, 16, 17, and 18. The numbering for new rules was selected based on the content of the various chapters.

Four of the proposed rules could be improved by the adoption of minor, technical amendments. The Commission has the authority to adopt a proposed rule with wording that differs from that in the published notice so long as the adopted version is not “substantially different” from the proposed rules. RCW 34.05.340.

The four rules that staff is urging you to amend prior to adoption are:

- **WAC 390-16-060 Forms for report of independent expenditures and electioneering communications.** Add dollar signs in Sections 3 and 5 of the C-6 form, as highlighted in yellow in Attachment B, since these symbols appear elsewhere on the form when dollar amounts are required.
- **WAC 390-16-307 Contributions by controlled entities.** The proposed staff amendment, highlighted in yellow in Attachment B, re-arranges the wording in subsections (2)(b) and (4)(b) so that the phrase “in support of or opposition to a candidate” only modifies the term “independent expenditure.” According to the statutory definition of “electioneering communication,” the point is whether the ad “clearly identifies” a candidate, not whether the ad expressly advocates support or opposition of a candidate.
- **WAC 390-18-010 Advertising, political advertising, electioneering communications, and independent expenditures.** The yellow highlighted proposed amendment would make a long-needed editing change. The context of subsection (5)(a) clearly calls for the abbreviation “e.g.,” in the lieu of the words “for example,” not the current reference to “i.e.,” which means “that is.”
- **WAC 390-18-060 Electioneering communication reporting threshold and sponsors.** The final technical, non-substantive changes staff is proposing are in subsection 7’s list of examples, specifically paragraphs (c) and (d). The last sentence of each reads: “All subsequent electioneering communications by Sponsors A and B identifying Candidates 1 are reportable.” Since this means that future communications they sponsor jointly as well as separately are reportable, it is clearer to use “and/or” as the conjunction, like the proposed rule does in the last sentence of paragraph (e).

All 23 proposed rules – 11 amendments and 12 new -- are listed in Attachments A through D along with a very brief description. Each of the proposals has been discussed at some length at one or more meetings in the last seven months. To date, we have not received any additional public comment for your consideration. Staff recommends adoption with the additional amendments noted above. Adopted rules will become effective 31 days after filing with the Code Reviser.